IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1203 of 1982

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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NEW INDIA INSURANCE CO.LTD - Appellant(s)
Versus
SAJJANBA WD/O V R CHUDASAMA & 8 - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1,
MR MC BHATT for Defendant(s) : 1 - 7, 9,
- for Defendant(s) : 8,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 08/08/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant has challenged the judgement and award dated 30.04.82 passed by the Motor Accident Claims Tribunal (Aux) at Narol in MACT Case No. 77 of 1979 whereby the Tribunal awarded an amount of Rs. 89000/- alongwith interest at the rate of 6% per annum payable by original opponent nos. 1 & 2 to the original claimants.

2. The original claimants had filed claim petition

seeking compensation to the tune of Rs. 95000/- in respect of the vehicular accident which occurred on 05.09.78 when the deceased alongwith two other persons was proceeding toward Zamp village for an offence. After reaching Zamp village, they found that it was not possible to proceed further either in police van or jeep. Therefore, they approached original opponent no.1 who owned a tractor bearing no. GJE 9673 to go further. The tractor driven in a rash and negligent manner fell in a side ditch as a result of which the driver of the tractor, the deceased and the cleaner died on the spot. The original claimants being the legal representatives of the deceased therefore filed claim petitions under the said circumstance. The Tribunal after hearing the parties passed the aforesaid award.

3. Learned counsel for the appellant has contended that the Tribunal erred in holding that the tractor is a goods vehicle and further erred in applying Rule 118 of the Bombay Motor Vehicle Rules. He has further contended that since the deceased was driving in a tractor which is not a vehicle, the insurance company shall not be liable.

4. Learned counsel for the respondent has supported the award of the Tribunal and submitted that the Tribunal has passed the award in accordance with law after considering the facts and circumstances of the case and therefore no interference is called for in the matter.

5. Heard learned counsel for the parties. I have gone through the award of the Tribunal and other documents placed on record. The appellant has contended that the Tribunal has erred in applying Rule 118 of the Act in the present case. In that view of the matter, it is imperative to go through Rule 118 of the Act and the same reads as under:

> “118. Carriage of persons in goods vehicles. (1) Subject to the provisions of this rule, no person shall be carried in a goods vehicle;
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> Provided that the owner or the hirer or a bonafide employee of the owner or the hirer of the vehicle carried free of charge or a police officer in uniform travelling on duty may be carried in a goods vehicle, the total number of persons so carried (i) in light transport goods vehicle having registered laden weight less than 900 kilograms, not more than one; (ii) in any other light transport goods vehicle other than light transport vehicle, not more than seven.”

5.1 In the present case, it is quite evident from the records that the deceased, though a police

personnel, was not in proper uniform as required under the law and therefore the benefit of Rule 118 cannot be granted. The Tribunal ought to have gone through the provisions of law in detail and passed the award.

6. Moreover, from the records it is also borne out that the vehicle was a tractor. Therefore, the definition of Tractor under Section 2(30) of the Motor Vehicles Act is required to be perused and the same is defined as under:

> “(30)“tractor” means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road roller.”

6.1 In view of the above, this Court is of the opinion that the Tribunal has erred in law by making the insurance company liable for payment of compensation. In view of breach of law by the deceased, the insurance company cannot be held liable and therefore the award calls for interference by this Court.

7. For the foregoing reasons, appeal is allowed.

The liability qua insurance company is quashed and set aside. The amount of award deposited by the insurance company shall be refunded. However, if the amount is withdrawn by the original claimants, the same shall not be recovered. It will be open for the insurance company to recover the same from the owner and if the amount is not paid to the claimant it will be open for them to recover the same from the owner. The award of the Tribunal is modified accordingly. No order as to costs.

(K.S. JHAVERI, J.)

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